

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4513 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?-Yes.
 2. To be referred to the Reporter or not?-Yes.
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?-No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?-No.
 5. Whether it is to be circulated to the Civil Judge?-No. :

PANCHMAHALS DISTRICT BAXI PANCH & BACHATVARG KANYA

Versus

STATE OF GUJARAT

Appearance:

MR RK MISHRA for Petitioner
MR RM DESAI for Respondent No. 1, 3
Mr.Deepak Dave, for
MR AD OZA for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 05/04/2000

ORAL JUDGEMENT

1. This petition is filed by the petitioner - Mandal
for quashing and setting aside an order passed by the

Gujarat Secondary Education Board ('Board', for short), respondent No.2 herein on 14th of March, 1996, Annexure 'A', and confirmed by the Government of Gujarat, respondent No.1 herein on October 1, 1996, Annexure 'B' herein.

2. The case of the petitioner is that it is a Society, registered under the Gujarat Cooperative Societies Act, 1961. The Society wanted to start a girls' school at village Sanjeli, under the name and style of "Indira Kanya Vidyalaya". For that purpose, an application was made. Initially, recognition was refused, but the said order was challenged by the petitioner by preferring an appeal and finally, the Government granted the recognition on December 29, 1989. It was the case of the petitioner that, in the nearby area of about 30 K.Ms., there is no other girls' school and the only girls' school is run by the petitioner.

3. On August 9, 1995, a surprise checking of the school was conducted by the Officers of the respondents and it was found that out of 19 girl students, only five students were present. Certain other irregularities / defects were also noticed and accordingly, a report was submitted to the Board on 4th November, 1995. Considering the said report, a show cause notice was issued by the Board on November 21, 1995, Annexure 'G' to the petition. In the said notice, as many as eight irregularities / defects were mentioned and the petitioner was called upon to show cause why appropriate proceedings should not be taken against it. The petitioner was asked to submit its reply within ten days, failing which an appropriate order would be passed, presuming that the school had nothing to say in the matter. On 7th December, 1995, a reply was submitted by the school, inter alia, stating that there were no irregularities / defects and that the petitioner was the only girls' school in the area. A prayer was made to pass an appropriate order so that Adivasi girls may not be deprived of getting education from a girls' school.

4. The Board, vide its order dated 14th March, 1996, held that all the irregularities / defects were proved. Accordingly, an order was passed, cancelling recognition of the petitioner. Being aggrieved by the said order, an appeal was filed before the State Government and it was also dismissed. The said order is challenged in the present petition.

5. I have heard Mr.R.K. Mishra, learned counsel for the petitioner, Mr.Deepak Dave for Mr.A.D. Oza, learned

counsel for respondent No.2 and Mr.R.M. Desai, for respondent Nos. 1 and 3.

6. Mr.Mishra raised several contentions. He submitted that there were no irregularities / defects and the findings recorded by the authorities were without any material on record. According to him, the case was of "no evidence" and, hence, orders are liable to be quashed and set aside.

7. An "opportunity to correct" ought to have been afforded by the authorities before taking drastic action of de-recognition of a school. A show cause notice was, no doubt, issued as to why recognition should not be cancelled. But, according to him, before issuing show cause notice and before affording hearing as to why recognition should not be cancelled, "an opportunity to correct" ought to have been extended, which was not done. The proceedings were, therefore, vitiated.

8. There was substantial improvement in the working and administration of the school after the order was passed by the Board. This is clear from a communication dated 3rd April, 1996 sent by the petitioner to the Government, wherein it was stated that there was increase in the number of students, inasmuch as, in the year 1990-'91, there were 15 students, but in 1995-'96, they were increased to 20. Since relevant and material considerations have not been kept in mind, the proceedings were vitiated.

9. A prayer was made to the Hon'ble Minister for Education and the Hon'ble Minister, vide a communication dated 11th February, 1999 (Annexure 'L'), informed the Chairman of the petitioner that appropriate instruction was given to the Additional Secretary, Education, to look into the matter. The counsel, therefore, submitted that at least a limited direction may be issued to the Government to decide the representation dated 3rd of February, 1999, referred to in the communication dated 11th February, 1999 (Annexure 'L').

10. Finally, it was submitted that even if this Court holds that the scope of exercise of power of judicial review under Article 226/227 of the Constitution is limited, an appropriate direction may be issued to the respondents to reconsider the matter so that exclusive girls' school in a backward area, in which Adivasi girls are admitted, may not be deprived of education.

11. Mr.Dave, on behalf of respondent No.2, on the

other hand, supported the order passed by the Board. He submitted that there is delay and laches on the part of the petitioner in approaching this Court. An order was passed by the Board in March, 1996, which was confirmed by the Government on 1st October, 1996. The petitioner approached this Court by filing the present petition on 25th of June, 1999, i.e. after about three years. No reason and / or explanation worth the name has been given as to why there was such unreasonable delay on the part of the petitioner in approaching this Court. The petition, therefore, deserves to be dismissed only on the ground of delay and laches.

12. On merits, Mr.Dave submitted that after following procedure laid down in Section 31 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as "the Act"), of issuing notice, calling for explanation and affording opportunity of hearing, an order was passed, wherein certain findings were recorded by the Board. Those findings were based on evidence and material placed before the Board. An action cancelling recognition of the school was taken. The said order was confirmed by the State Government. It, therefore, cannot be contended by the school that the case is of "no evidence" or illegality was committed by the Board. He also submitted that sub-section (9) of Section 31 provides that whenever there is default on the part of the institute in complying with the provisions of the Act, Regulations or Instructions issued to such Institute, the Board should give opportunity of being heard to such school and may pass an appropriate order in accordance with law. In the instant case, on the basis of inspection and report, prima facie, the Board was satisfied that there were defects on the part of the school. A show cause notice was, therefore, issued, explanation was called for, reply submitted by the petitioner was scrutinised and after considering the relevant facts and circumstances, an order was passed. The said order was clearly in accordance with law and the petitioner cannot make grievance against it.

13. Mr.Dave also submitted that sub-section (10) of Section 31 provides an appeal to the State Government and even the said appeal was dismissed. He submitted that the order passed by the Government is "final" and thus, statutory finality is attached by the Legislature to the order of the State Government.

14. Mr.Desai, learned counsel for the respondent No.1, also supported Mr.Dave. He submitted that for three years, nothing was done by the petitioner and the

school is not being run since last three years. Apart from other considerations, even on that ground, the petition deserves to be dismissed.

15. In the facts and circumstances of the case, in my opinion, no case has been made out to interfere with the order passed by the Board and confirmed by the State Government.

16. I find considerable substance in the preliminary objection raised by the learned counsel for the respondents that there was undue and unexplained delay and laches on the part of the petitioner in approaching this Court. As stated hereinabove, the order was passed by the Board on March 14, 1996, and confirmed by the State Government on 1st October, 1996. The petition was filed after about three years, and no explanation worth the name has been offered by the petitioner why it took almost three years in approaching the Court. Mr. Mishra submitted that a representation was made to the Hon'ble Minister for Education and for that, my attention was invited to Annexure 'L' dated 11th February, 1999. That communication refers to an application of the petitioner dated 3rd of February, 1999. Thus, between 1st of October, 1996 and 3rd of February, 1999, the petitioner did nothing and no action was taken.

17. It is true that no period of limitation is prescribed in approaching this Court under Article 226 and / or 227 of the Constitution. But, it is equally well-settled law that a party aggrieved is supposed to approach this Court within a reasonable period. If there is undue delay on the part of the petitioner in approaching this Court, it is expected of the petitioner to explain delay and put forward circumstances why he could not approach the Court. The Court, in the light of such explanation, will decide the question.

18. In the instant case, there is no whisper about any reason or ground and hence, the contention of the learned counsel for the respondents deserves to be upheld that there was undue delay and laches on the part of the petitioner in approaching this Court and the petition deserves to be dismissed on that ground.

19. Even on merits, no case has been made out by the petitioner. As many as eight irregularities / defects were alleged against the petitioner and they were established. Findings of fact have been recorded by the Board and confirmed by the State Government. Obviously, they were reached by the authorities after appreciating

and re-appreciating the evidence on record. In exercise of extraordinary / supervisory power under Article 226 / 227 of the Constitution, this Court does not undertake the task of appreciation and re-appreciation of evidence. When on the basis of the findings recorded, the petitioner's school was ordered to be de-recognised, it cannot be said that by doing so, any illegality was committed by the authorities and the order requires interference.

20. Strong reliance was placed by Mr.Mishra on the fact that the petitioner is the only girls' school in the area and there are several girl students. Looking to the order passed by the State Government, however, it is clear that there are several secondary schools in the vicinity. It is true that the petitioner is the only girls' school, but it is also observed in the impugned order that majority of the students were from other schools which is clear from the school leaving certificates of those students, who have been admitted in the petitioner-school. Those girl students have studied in other schools where there was co-education. Thus, it cannot be said that in absence of the petitioner-school, girl students would be deprived of getting education as contended by the petitioner.

21. The next contention relates to the communication by the Hon'ble Education Minister dated 11th February, 1999 (Annexure 'L'). The submission of the learned counsel for the petitioner is that when the petitioner made an application on 3rd February, 1999, it was informed on 11th February, 1999 that the prayer permitting the petitioner to restart the school was under consideration and necessary instructions were issued to the Additional Secretary, Education. It was, therefore, prayed that appropriate direction may be issued to the State to take appropriate decision on the application of the petitioner.

22. The questions that arise for my consideration are : Firstly, whether an order passed by the Board and confirmed by the State Government can be said to be legal, valid and in accordance with law; and, Secondly, whether an order passed by the Board and confirmed by the State Government under Section 31 can be made subject matter of direction by the State Government under Section 48 of the Act.

23. To appreciate the contentions raised by the parties, it would be appropriate to quote both the

sections, viz., Sections 31 and 48, in extenso :-

" 31. (1) No person shall impart secondary education through a school unless such school is registered under the provisions of this Act;

(2) As soon as may be after the appointed day, the Board shall prepare and maintain thereafter, a register of Secondary Schools in accordance with the provisions of this Act.

(3) The register shall include such particulars as may be prescribed.

(4) Every person who desires to impart secondary education by establishing a school, shall, on an application in such form and on payment of such fee as may be prescribed, be entitled to have the name of the school entered in the register, subject to the fulfilment of the conditions prescribed by the Board for registration of secondary schools.

(5) Notwithstanding anything contained in sub-section (4) the name of every secondary school which immediately before the appointed day is a recognized school shall be entered in the register and shall be deemed to have been entered in the register from the appointed day and shall continue thereon until removed under the provisions of this Act.

(6) The Board shall consider and make an inquiry in respect of every such application for registration in such manner as may be prescribed and then decide it within a period of three months from the date of receipt of the application by the Board.

(7) When the register is prepared in accordance with the foregoing provisions, the Board shall publish in the Official Gazette and in such n...

may select, a notice stating that the

register containing the names of secondary schools entered thereunder upto the date specified in the notice has been prepared.

(8) Every registered school shall be given a certificate of registration in the prescribed form.

(9) Where any person in charge of the management of a registered school has been, after due enquiry by the Board in the prescribed manner, found to have committed default in carrying out any of the obligations imposed on such person under this Act or the regulations, or any instructions issued to him by the Board,

...

person an opportunity of being heard, direct the name of the school to be removed from the register for such period as may be specified in the direction or to be removed from the register permanently.

(10) Any person aggrieved by the decision of the Board under sub-section (6) or sub-section (9) may, within a period of one month from the date on which such decision is communicated to him, appeal, to the State Government, and the State Government shall decide the appeal within two months from the date of the presentation of the petition of appeal and the decision in such appeal shall be final.

(11) The Board may, on sufficient cause being shown, direct at any time that the name of the school so removed shall be re-entered in the register on such condition and on payment of such fee as may be prescribed and on such further conditions as the Board may deem fit to impose.

(12) Where the name of any registered school is removed from the register under sub-section (9) the certificate of registration issued to the person in charge of the management thereof, shall be deemed

to have been cancelled and such person shall forthwith surrender the certificate to the Board or to an officer authorized by the Board in this behalf. The cancellation

...

notified by the Board in the Official Gazette and in such newspapers as the Board may select.

(13) The register shall be open to inspection by any person at all reasonable hours in the office of the Board. "

" 48.(1) The State Government shall have the power, after considering the advice, if any, tendered by the Board to issue to the Board such directions as it may consider necessary in regard to all or any of the matters specified in section 17. The Board shall comply with such directions.

(2) The State Government shall also have the right to address the Board with reference to anything it has conducted or done, or is conducting or doing, or intends to conduct or do, and to communicate to the Board its views in the matter.

(3) The Board shall report to the State Government such action, if any, as it proposes to take or has taken upon the communication, and shall furnish an explanation if it fails to take action.

(4) If the Board does not within a reasonable time take action to the satisfaction of the State Government, the State Government may, after considering any explanation furnished or representation made by the Board, issue such directions consistent with this Act, as it may think fit, and the Board shall comply with such directions.

(5) In any emergency which, in the opinion of the State Government, requires that immediate action be taken, the State Government may take such action consistent with this Act as it deems necessary,

without previous consultation with the Board and shall forthwith inform it of the action taken.

(6) The State Government may by order in writing specifying the reasons thereof, suspend the execution of any resolution or order of the Board and prohibit the doing of the action ordered to be or purporting to be ordered to be done by the Board, if it is of the opinion that such resolution, order or act is in excess of the power conferred upon the Board by or under this Act."

Now, Chapter IV relates to registration of secondary schools. The said Chapter contains only two Sections, viz., Sections 31 and 32. Section 31 prohibits imparting of secondary education without registration and also lays down procedure for such registration. A bare reading of the said sections makes it clear that no person shall impart secondary education through a school unless such school is registered in accordance with the provisions of the Act. It also provides for making of application, payment of prescribed fees and fulfilment of other terms and conditions. It enables the Board to make enquiry in respect of such application and take an appropriate decision thereon. If the application is in accordance with law and all formalities have been observed, registration will be granted to such school. Sub-section (9) of Section 31 authorizes the Board to cancel registration of the school after complying with the principles of natural justice if the Board is of the opinion that the registered school has committed default in carrying out obligations imposed on it. Sub-section (10) of Section 31 confers a right of appeal on the aggrieved party against the decision of the Board. Such appeal lies to the State Government and the decision in such appeal is "Final". Obviously, the said finality is "statutory finality" and it does not affect the power and jurisdiction of this Court under Article 226 / 227 of the Constitution.

24. The question, however, is whether the order passed by the State Government under sub-section (10) of Section 31, to which statutory finality is attached, is open to challenge under sub-section (1) of Section 48 of the Act? The contention of Mr. Mishra for the petitioner is that the power conferred on the State Government under sub-section (1) of Section 48 is separate and independent of the power exercised by the State Government under

sub-section (10) of Section 31 of the Act and even after an order is passed under Section 31(10) of the Act, the State Government can issue direction to the Board in exercise of power under Section 48(1) of the Act. The rival contention of Mr.Dave for the Board is that the contention is not well-founded and upholding of such contention would make the legislative provision relating to finality meaningless. Once an order is passed by the State Government under Section 31(10) of the Act, it is not open to be corrected or interfered with under Section 48(1) of the Act and the aggrieved party can approach only this Court under Article 226 / 227 of the Constitution.

25. I find considerable force in the argument of Mr.Dave. Looking to the legislative scheme, in my judgment, both the provisions must be interpreted harmoniously and in their proper perspective. As stated above, Chapter IV provides for registration of secondary schools. The power of registration of the secondary school has been conferred on the Board and an aggrieved party has a right of appeal to the State Government. The order passed by the State Government on such appeal, i.e. appeal relating to registration of a secondary school, has been treated as final. If the interpretation sought to be canvassed by Mr.Mishra is accepted, and a party can be permitted to invoke the power of the State Government under sub-section (1) of Section 48 of the Act, sub-section (10) of Section 31 would become nugatory and otiose. Such interpretation would also destroy the finality conferred on the orders passed by the State Government. Unless compelled, a court of law would not interpret one provision of a statute, which makes another provision nugatory or meaningless.

26. The matter can be looked at from different angle as well. Such interpretation would not be in consonance with the intention of the Legislature. The authority to exercise the power of cancellation of registration of school is with the Secondary Education Board and the appellate authority is the State Government. Thus, for cancellation of registration of a school, two authorities can exercise power under the Act, viz., the Board (original authority) and the State Government (appellate authority). It is also a legislative mandate that the order passed by the appellate authority (State Government) is final. If the contention of the petitioner is upheld that powers under Section 48(1) can be exercised by the State Government after the order passed by it under Section 31(10) of the Act, the statutory finality, which has been enacted by the

Legislature would have to be given go-by. It is not appropriate to read a provision which is final as subject to further control by ignoring "finality clause". Again, it is to be remembered that both the powers are exercisable by one and the same authority, viz., the State Government. If the argument is accepted, an order passed under sub-section (10) of Section 31 by the State Government which is final, can again be disturbed by the same authority (State Government) under Section 48(1) of the Act. Such interpretation would neither be in accordance with general principles of interpretation of statutes nor in consonance with the intention of the Legislature.

27. The question then is : What is ambit and scope of Section 48(1) of the Act? As stated above, sub-section (1) of Section 48 enables the State Government to issue to the Board "such directions as it may consider necessary in regard to all or any of the matters specified in section 17". Section 17 enumerates "powers and duties of the Board". It, inter alia, provides that the Board may advise the State Government on reference being made to it or on its own motion on matters of policy relating to secondary education in general and certain matters specified in sub-section (1) of Section 17 in particular. Section 17 also speaks of curricula and detailed syllabi relating to secondary education, organization of programmes to train teachers, measures for promotion of physical, moral and social welfare of students, guide and help to registered schools in their search for talent, permit and encourage schools in carrying out useful educational experiments and research, etc. Without expressing final opinion in the present matter, in my view, sub-section (1) of Section 48 empowers the State Government to issue directions relating to matters specified in Section 17 of the Act. In other words, such directions must be in the nature of policy directions. Sub-section (2) authorizes the State Government to address the Board with reference to anything it has conducted or done or is conducting or doing or intends to conduct or do and to communicate to the Board its views in the matter. Sub-sections (3) and (4) enjoin the Board to comply with the directions issued by the State Government. Sub-section (5) of Section 48 permits the State Government to deal with emergency, which, in its opinion, requires immediate action to be taken consistent with the Act even without previous consultation with the Board. Sub-section (6) enables the State Government to suspend execution of any Resolution or order of the Board or prohibit the doing of any act by making an order in writing recording reasons in support

thereof if it is of the opinion that such Resolution, order or act is in excess of power conferred upon the Board by or under the Act.

28. Thus, prima facie, it cannot be said that a decision taken by the State Government in exercise of appellate jurisdiction against a decision of the Board under Section 31 of the Act, to which statutory finality is given by the Legislature, can be re-opened and interfered with by the same authority, viz., the State Government, in purported exercise of power under Section 48 of the Act. The Government is custodian of public interest and in that capacity, it exercises power of control and supervision over Boards and public authorities. One of the modes of exercising control over such boards and authorities is to issue directives to them on matters of 'policy', keeping in mind the relevant provisions of a statute under which such powers are to be exercised. In my opinion, Section 48 of the Act deals with such powers and enables the State Government to issue directions on the matters enumerated in Section 17 of the Act.

29. In any case, no such decision is taken by the Government and hence, I may not be understood to have expressed final opinion on the question. Since, however, submissions were made and arguments were advanced by the learned counsel for the petitioner on the basis of a communication Annexure 'L' to the petition dated February 11, 1999, and direction is sought to issue appropriate writ to the respondents to decide the question, I have dealt with the point by interpreting the provisions of Sections 31 and 48 of the Act. I may make it clear that as and when such question will come up for consideration before an appropriate court in appropriate proceedings, the Court will decide the question in accordance with law without being inhibited by the observations made by me hereinabove.

30. In my opinion, on the basis of the evidence and material placed before the Board, the Board was satisfied that irregularities were committed by the petitioner-School and hence, the registration was liable to be cancelled. The said order was confirmed by the State Government in exercise of appellate power. As there is no illegality in the exercise of power either by the Board or by the State Government, I see no reason to interfere with the said order. The petition, therefore, deserves to be dismissed. It is accordingly dismissed. Notice is discharged. No order as to costs.

5th April, 2000 (C.K. Thakkar, J.)

(apj)